

In re: Appln No. 09/358,280
Atty Docket: 6030-021 (MISTY-52064)
Customer No. 29,335

REMARKS

Status of Claims

Claims 5, 8-10, and 18-19 have been amended, and Claim 24 has been added. Support for the amendment to Claims 5 and 18 which recites the direct coupling of the restrictive valve of the present invention to the inlet of the pressurizable container of the present invention may be found in the specification at: column 2, line 55; and, column 3, lines 64-66. The additional amendments to the claims have been made for purposes of clarity, and are supported throughout the specification. Support for the language of newly presented Claim 24 may be found in Claim 5 prior to its current amendment. No new matter has been added by way of amendment or presentation of new claims.

Claims 5, 7-10, 18-21, and 23-24 are now pending in the present application.

Response to Amendment

Applicant acknowledges the Examiner's statement regarding Applicant's failure in Applicant's response to the Office Action of January 9, 2004, to indicate Claim 22 as canceled. Applicant thanks the Examiner for proceeding to consider this prior response despite this inadvertent omission from its text.

Priority

Applicant has claimed priority for the pending claims of the present application to the July 6, 1989, filing date of the earliest filed application, namely, U.S. Serial No. 07/376,380 (the "Priority Application"). From the Examiner's response on page 7 of the Office Action of June 15, 2004 (the "Office Action"), it again appears that the Examiner does not dispute this priority claim as it applies to currently pending independent Claim 5, and Claim 8 which depends

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therefrom, since neither of these claims are recited in the Examiner's discussion on page 7 of the Office Action. On this basis Applicant assumes that U.S. Patent No. 4,911,339 ("Cushing") has been removed as a prior art reference against Claims 5 and 8. However, in the event that this is not the Examiner's intent, Applicant has amended independent claim 5 to overcome Cushing on independent grounds (see below). Applicant has also reproduced claim 5 with clarifying amendments as claim 24, in order to preserve the right to the subject matter of this claim in the event that Cushing in fact does not apply to this claim.

With regard to the Examiner's rejection of priority of the remaining claims to the filing date of the Priority Application, the Examiner indicates that these claims have not been granted this priority because the Priority Application does not sufficiently disclose all the limitations of these claims. In this regard, Applicant notes that the specification of the Priority Application in fact does support the breadth of these pending claims, and requests that the Examiner grant priority for these claims to the filing date of the Priority Application.

Thus with regard to claims 7, 9, and 10: while the specification does not explicitly state that the apparatus of the present invention may be worn on the waist, as recited in claim 7, it clearly discloses that this apparatus may be worn on the body of the user (e.g., the shoulders; see the specification, column 3, line 57 to column 4, line 7), which would include the waist; the specification explicitly discusses the use of the manual pump of claim 9 (specification, column 1, lines 55-64); and, with regard to the use of water and ice recited in claim 10, while ice is not explicitly recited in the specification, it would be within the knowledge of one skilled in the art of evaporative cooling to use ice as well as water to obtain such a cooling effect.

With regard to claims 18-21 and 23, Applicant is unable to determine from the statements on page 7 of the Office Action what aspects of these claims the Examiner considers as not disclosed within the Priority Application. Therefore, Applicant respectfully requests clarification from the Examiner regarding the specific basis for denying a grant of priority to the filing date of the Priority Application for these claims, and continues to assert a claim of priority for these claims subject to the Examiner's response.

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The Rejection of Claims 5, 8-9, 18-19, 21, and 23 Under 35 U.S.C. § 102(b) as Anticipated by Anderson Has Been Obviated, and Should be Withdrawn.

The Examiner has rejected claims 5, 8-9, 18-19, 21, and 23 under 35 U.S.C. § 102(b) as anticipated by Anderson, U.S. Patent No. 2,853,212 ("Anderson"). This rejection will be traversed for independent claims 5 and 18, and for the remaining claims which depend therefrom. This rejection will then be traversed for new independent claim 24, which, as discussed above, is a recapitulation of claim 5 with minor amendments.

With regard to independent claim 5, Applicant has amended this claim to specify that the restrictive valve of this apparatus is *directly coupled* to the inlet of the pressurizable container. This situation is unlike that in Anderson, which describes a spray nozzle for discharging the spray solution, where the spray nozzle is connected *through a tube* to the pump-containing apparatus. Anderson, column 3, lines 39-42. Clearly the spray nozzle is, as Anderson describes, "for discharging the spray solution," and therefore functions as a restrictive valve. Since this restrictive valve is not *directly coupled* to the pump-containing apparatus of Anderson, Anderson does not anticipate independent claim 5. Therefore, the rejection of claim 5 as anticipated by Anderson has been obviated, and should be withdrawn.

With regard to independent claim 18, Applicant has amended this claim to indicate that the means for controlling the emission of evaporative mist comprises a restrictive valve *directly coupled* to the inlet of the pressurizable container. Therefore, for the same reasons as cited above for independent claim 5, independent claim 18 is not anticipated by Anderson. Therefore, the rejection of claim 18 as anticipated by Anderson has been obviated, and should be withdrawn.

With regard to remaining claims 8-9, 19, 21, and 23, which depend from independent claims 5 or 18, in light of the failure of Anderson to anticipate independent claims 5 or 18, it is

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axiomatic that dependent claims 8-9, 19, 21, and 23 are similarly not anticipated by Anderson. Therefore, since none of these dependent claims are anticipated by Anderson, the rejection as it applies to these claims should be withdrawn

With regard to new independent claim 24, this claim recites a *non-removable* means for pressurizing the pressurizable container. Since Anderson explicitly and repeatedly describes a *removable* pump unit (Anderson, column 1, lines 67-71), Anderson does not anticipate new independent claim 24. Therefore, this claim should not be rejected as anticipated by Anderson.

The Rejection of Claims 5, 8, 18-19, 21, and 23 Under 35 U.S.C. § 102(b) as Anticipated by Cushing Has Been Obviated, and Should be Withdrawn.

The Examiner has rejected claims 5, 8, 18-19, 21, and 23 under 35 U.S.C. § 102(b) as anticipated by Cushing, U.S. Patent No. 4,911,339 ("Cushing"). This rejection will be traversed for independent claims 5 and 18, and for the remaining claims which depend therefrom. This rejection will then be traversed for new independent claim 24, which, as discussed above, is a recapitulation of claim 5 with minor amendments.

With regard to independent claim 5, this claim is not anticipated by Cushing in light of its amendment to recite a restrictive valve *directly coupled* to the pressurizable container. Specifically, Cushing explicitly discloses the use of a hand-operated valve to release water to a bicycle rider, where this valve is necessarily at the end of the tube that connects the handlebar-mounted valve to the water bottle reservoir located above the bicycle's gear system. Since Cushing does not disclose a valve attached to the water bottle reservoir itself, Cushing clearly does not anticipate claim 5 as currently amended. Therefore, the rejection of this claim as anticipated by Cushing has been obviated, and should be withdrawn.

With regard to independent claim 18, Applicant has amended this claim to indicate that the means for controlling the emission of evaporative mist comprises a restrictive valve *directly*

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coupled to the inlet of the pressurizable container. Therefore, for the same reasons as cited above for independent claim 5, independent claim 18 is not anticipated by Cushing. Therefore, the rejection of claim 18 as anticipated by Cushing has been obviated, and should be withdrawn.

With regard to remaining claims 8, 19, 21, and 23, which depend from independent claims 5 or 18, in light of the failure of Cushing to anticipate independent claims 5 or 18, it is axiomatic that dependent claims 8, 19, 21, and 23 are similarly not anticipated by Cushing. Therefore, since none of these dependent claims are anticipated by Cushing, the rejection as it applies to these claims should be withdrawn

With regard to new independent claim 24, as stated above, Applicant has presented this claim in order to preserve his rights should the Examiner state that Cushing does not apply to this claim, as Applicant concludes the Examiner intends from the Examiner's statements on page 7 of the Office Action (see above). Therefore, on this basis, Cushing would not apply as an anticipatory reference to claim 24.

The Rejection of Claims 5, 8, 18-19, 21, and 23 Under 35 U.S.C. § 103(a) as Obvious over Anderson in View of Norman Has Been Obviated, and Should be Withdrawn.

The Examiner has rejected claims 5, 8, 18-19, 21, and 23 under 35 U.S.C. § 103(a) as obvious over Anderson in view of U.S. Patent No. 842,689 ("Norman"). In this regard it appears that the Examiner is using Norman to provide a valve in tube (34) of Anderson, should the presence of such a valve be in doubt.

In response, Applicant notes that, as discussed above, Applicant does not dispute the presence of such a valve; however, because of the placement of this valve in Anderson, Anderson does not act to prevent the allowance of the claims as presented. Specifically, all of claims 5, 8, 18-19, 21, and 23 disclose a restrictive valve that is *directly coupled* to the inlet of the pressurizable container. This situation is unlike that in Anderson, which describes a spray

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nozzle for discharging the spray solution, where the spray nozzle is connected *through a tube* to the pump-containing apparatus. Therefore, none of claims 5, 8, 18-19, 21, or 23 are obvious over Anderson in view of Norman. Consequently their rejection on this basis has been obviated, and should be withdrawn.

With regard to new independent claim 24, because this claim recites a non-removable means for pressurizing the pressurizable container, this claim is also not obvious over Anderson in view of Norman. Consequently, this claim should not be rejected on this basis.

The Rejection of Claim 10 Under 35 U.S.C. § 103(a) as Obvious over Cushing in View of Rosenberg Has Been Obviated, and Should be Withdrawn.

The Examiner has rejected claim 10 under 35 U.S.C. § 103(a) as obvious over Cushing in view of U.S. Patent No. 4,960,419 ("Rosenberg"). However, Cushing alone does not disclose every element of claim 10, and this incomplete recitation of every element of claim 10 is not cured by the combination of Cushing with Rosenberg. On this basis, the rejection of claim 10 as obvious over Cushing in view of Rosenberg has been obviated, and should be withdrawn.

The Rejection of Claims 7 and 20 Under 35 U.S.C. § 103(a) as Obvious over Cushing in View of Shurnick Has Been Obviated, and Should be Withdrawn.

The Examiner has rejected claims 7 and 20 under 35 U.S.C. § 103(a) as obvious over Cushing in view of U.S. Patent No. 4,852,781 ("Shurnick"). However, Cushing alone does not disclose every element of claims 7 or 20, and this incomplete recitation of every element of these claims is not cured by the combination of Cushing and Shurnick. On this basis, the rejection of claims 7 and 20 as obvious over Cushing in view of Shurnick has been obviated, and should be withdrawn.

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The Rejection of Claim 9 Under 35 U.S.C. § 103(a) as Obvious over Cushing in View of Anderson Has Been Obviated, and Should be Withdrawn.

The Examiner has rejected claim 9 under 35 U.S.C. § 103(a) as obvious over Cushing in view of Anderson. However, Cushing alone does not disclose every element of claim 9, and this incomplete recitation of every element of claim 9 is not cured by the combination of Cushing and Shurnick. On this basis, the rejection of claim 9 as obvious over Cushing in view of Shurnick has been obviated, and should be withdrawn.

CONCLUSION

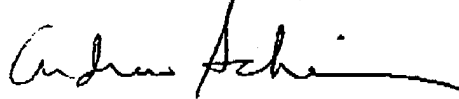
This response is being filed concurrently with a Request for Continuing Examination (RCE) and the appropriate extension fees and an Amendment Transmittal. The Commissioner is hereby authorized to charge any fees which may be required, or credit any overpayment, to Rosenbaum & Associates, P.C. deposit account No. 18-2000.

In light of the foregoing discussion, Applicant respectfully submits that all outstanding requirements have been met, and that Claims 5, 7-10, 18-21, and 23-24 should be allowed.

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Should the Examiner require any further information or wish to discuss an aspect of this Response, the Examiner is encouraged to telephone the undersigned at the telephone number set forth below.

Respectfully submitted,



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